IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NOS. 312 AND 313 OF 2006
IN
STAMP NUMBER MAIN NOS. 2248 AND 2250 OF 2006

Mr. Franklin Rodrigues,
Major in age, unmarried,
Resident of House No.30,
Santana de Telaulim,
Ilhas, Goa. ... Applicant/Complainant

versus

Mr. Edward Pereira,
Resident of House No.55,
Commichem Bhatt,
Merces, Ilhas, Goa. ... Respondent/Accused

Mr. S. D. Lotlikar, Senior Advocate with Mr. R. Menezes, Advocate for the Applicant/Complainant in both the applications.

CORAM : N. A. BRITTO, J.

DATE : 13TH SEPTEMBER, 2006.

ORAL ORDER

Heard Mr. S. D. Lotlikar, the learned Senior Counsel on behalf of the applicant/complainant.

2. The complainant had filed three criminal complaints against the accused for dishonour of three cheques. They are as follows:-

1. Cheque No.365945 dated 31-5-2003;

2. Cheque No.365946 dated 15-6-2003; and

3. Cheque No.365497 dated 31-5-2003.

3. There is no dispute that the said three cheques were issued by the accused. There is also no dispute that when the said three cheques were presented for payment by the complainant, they were dishonoured. There is also no dispute that the complainant sent a statutory notice to the accused and the accused did not comply with the same.

4. The complaint in respect of the second cheque namely 365946 dated 15-6-2003 came to be settled between the parties after the accused paid a sum of Rs.50,000/- to the complainant, although it appears that the complainant's Attorney still has a grievance that the accused did not pay interest and damages due

on the same. The subject matter of the two complaints filed by the complainant were the first and the third cheques. The accused came to be acquitted in the said two complaints by Judgments dated 9-6-2006 of the learned J.M.F.C., Panaji.

5. The complainant therefore has filed the present applications seeking leave to appeal. As the facts and the law applicable are the same, both the applications are being disposed of by this common order.

6. The complainant examined his sister-in-law as Attorney in support of the complaint. As per the complainant, the accused was paid a cash of Rs.1,50,000/- and towards the repayment, the accused had issued the said three cheques in the sum of Rs.50,000/- each. The accused seriously contested that he was advanced cash of Rs.1,50,000/-. According to him, he was advanced only Rs.50,000/- in cash and Rs.1,00,000/- was paid to him by the complainant by virtue of Cheque No.0491459 dated 7-1-2003 which he did not encash and it was mutually agreed between the complainant and the accused that the subject cheques would be destroyed by the complainant and the said

cheque for Rs.1,00,000/- would be destroyed by the accused. In support of his case the accused examined himself and also produced the said cheque of Rs.1,00,000/- dated 7-1-2003. The complainant's Attorney, in her cross-examination admitted that the complainant had an account in the Goa Urban Co-operative Bank Ltd., Panaji. The complainant's Attorney also impliedly admitted that the said cheque of Rs.1,00,000/- dated 7-1-2003 bore the signature of the complainant, when the same cheque was shown to her. In other words, the complainant did not deny the assertion of the accused that the said cheque for Rs.1,00,000/- dated 7-1-2003 was signed and issued by the complainant to the accused. The accused in his further evidence stated that he had approached the complainant for financial help of Rs.1,50,000/- and the complainant had given to him cash of Rs.50,000/- and the said cheque for Rs.1,00,000/- dated 7-1-2003 drawn on Goa Urban Co-operative Bank Ltd. The accused also stated that since he was in need of money by the end of December, 2002, he had arranged for the same through some other source and did not encash the said cheque for Rs.1,00,000/- dated 7-1-2003 and it was agreed between the complainant and the accused that the subject cheques issued by

the accused to the complainant of Rs.50,000/- each and the cheque issued by the complainant to the accused of Rs.1,00,000/- dated 7-1-2003 would be destroyed. The complainant's Attorney in her cross-examination stated that she was not present when the complainant and the accused had met. She had further stated that she did not know if there was any understanding between the complainant and the accused that as the accused had not encashed the said cheque for Rs.1,00,000/- the complainant would destroy the cheques given by the accused, the subject matter of the complaints.

7. The learned J.M.F.C. observed that the case of the accused was not even denied by the Attorney of the complainant and read along with the specific evidence of the accused, the case of the accused was reasonably probable. The learned J.M.F.C. also referred to the case of **Hiten P. Dalal** v. **Bratindranath Banerjee**((2001) 6 SCC 16) and noted that the rebuttal of presumption under Section 139 of the Negotiable Instruments Act, 1881 had not to be conclusively established by the accused but the accused could lead such evidence that the Court must either believe the defence to exist or consider its

existence to be reasonably probable, the standard of reasonability being that of a prudent man. The case of the accused that he was given cash of Rs. 50,000/- and cheque of Rs.1,00,000/- when he approached the complainant for financial help of Rs.1,50,000/- appears more than probable. By his own evidence and the production of the said cheque for Rs.1,00,000/- dated 7-1-2003 the accused has proved that he had only received cash of Rs.50,000/- which he had paid and the subject cheques were without any consideration. The presumption available to the complainant was sufficiently rebutted by the accused. The conclusion arrived at by the learned J.M.F.C. cannot be faulted. No case is made out for the grant of special leave.

Applications are hereby dismissed.

N. A. BRITTO, J.

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